

REMARKS

The claims of this application stand rejected as being anticipated by or obvious over Arber U.S. 6,353,939, which has a filing date of December 4, 2000 (the "Effective Date"). In a response filed September 10, 2003 with accompanying declarations, Applicant established a date of conception for his invention at least as early as July-August 2000, i.e. prior to the Effective Date. In a subsequent response filed May 14, 2004 with additional accompanying declarations, Applicant established due diligence from November 2000, i.e. prior to the Effective Date, to the filing of U.S. Provisional Patent Application No. 60/274,325, filed March 8, 2001.

In accordance with the provisions of 37 CFR 1.131, which, in relevant sections, reads as follows:

37 CFR 1.131 Affidavit or Declaration of Prior Invention.

(a) When any claim of an application or patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based. ...

(b) **The showing of facts shall be such, in character and weight, as to establish** reduction to practice prior to the effective date of the reference, or **conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date** to a subsequent reduction to practice or **to the filing of the application.** ... (*emphasis provided*)

In an Advisory Action mailed June 21, 2004, the Examiner continued her rejection of the application, saying: holding, in a clear misinterpretation of the 37 CFR 1.131(b), says:

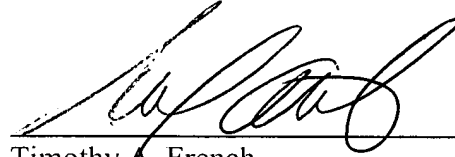
"...diligence must be established by evidence for the time period dating July 2000 until February 2001 (critical period). ...this Declaration does not provide a basis for diligence from the period of July 2000 until November 2000. As diligence must be shown for the entire critical period (July 2000-February 2001) and the declaration does not provide such evidence, it is therefore insufficient to overcome the Arber reference."

This continuing rejection is based on a clear misinterpretation and misapplication of 37 CFR 1.131(b). As evidenced by the Examiner's statements, Applicant has established conception of the invention prior to the effective date of the Arber '939 reference coupled with due diligence from prior to the effective date to the filing of his application. Therefore, withdrawal of the rejection is appropriate, and immediate allowance of this application is requested.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: July 28, 2004



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